



CASES AND MATERIALS ON TRUSTS

VOLUME ONE: EXPRESS TRUSTS

WINTER TERM, 2000

Professor J. Phillips

These materials are reproduced solely for the use of students at the Faculty of Law, University of Toronto

BORA LASKIN LAW LIBRARY

DEC - 2 1999

FACULTY OF LAW
UNIVERSITY OF TORONTO

CASES AND MATERIALS ON TRUSTS

VOLUME ONE: EXPRESS TRUSTS

WINTER TERM, 2000

Professor J. Phillips

These materials are reproduced solely for the use of students at the Faculty of Law, University of Toronto



Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

<https://archive.org/details/casesmaterialson01phil>

VOLUME ONE - EXPRESS TRUSTS

NOTE: These materials reproduce in part R. Scane, Cases and Materials on Trusts and M. Gillen and F. Woodman, eds., Cases and Materials in the Law of Trusts: A Contextual Approach (forthcoming, Emond-Montgomery, 2000)

CHAPTER ONE: INTRODUCTION

a) Definitions1

b) History of Equity and Trusts

Girard, "The History and Development of Equity"4

c) Trusts Compared to Other Legal Relationships

i) Trust and Debt

Hydro Electric Power Commission of Ontario v. Brown ..35

Queen in Right of British Columbia v.

Henfry Samson Belair38

ii) Trust and Contract

Tobin Tractor 1957 Ltd v. Western Surety Co46

iii) Trust and Power of Appointment

Re Weekes' Settlement55

Re Lloyd59

CHAPTER TWO: THE EXPRESS TRUST - THE THREE CERTAINTIES

a) Certainty of Intention

Johnson v. Farney63

Hayman v. Nicholl66

Re Hornell71

Re Shamas76

b) Certainty of Subject Matter

Palmer v. Simmonds	80
Re Beardmore Trusts	81
Re Golay's Will Trusts	85

c) Certainty of Beneficiaries

i) Conceptual Uncertainty

Re Coates	87
Re Connor	89

ii) Uncertainty Due to the Number of Potential Objects

Introductory Note	92
Re Gulbenkian's Settlement Trusts	93
McPhail v. Doulton	97
Re Baden's Trust Deed	108

CHAPTER THREE: THE EXPRESS TRUST - CONSTITUTION AND FORMALITIES

a) Constitution

Milroy v. Lord	115
Re Rose	120
Paul v. Constance	128

b) Exceptions? Assigning an Equitable Interest and
the Rule in Strong v. Bird

Re Wale	131
Re Freeland	139
Re Gonin	143

c) Formalities Generally

The Statute of Frauds	148
Succession Law Reform Act	153
Re Beardmore Trusts	154
Anderson v. Patton	154

d) Secret Trusts

McCormick v. Grogan	160
In Re Boyes	167
In Re Keen	170
Ottaway v. Norman	177

CHAPTER FOUR: NON-CHARITABLE PURPOSE TRUSTS

a) The General Rule Against Validity

Introductory Note	185
Re Astor's Settlement Trusts	186
Notes	190

b) Purpose Trusts with Individual Beneficiaries

Re Denley's Trusts	192
Note	195

c) The Problem of Unincorporated Associations

Re Lipinski's Will Trusts	196
Note	201

d) Statutory Reform

Introductory Note	202
Re Russell; Wood v. R.	203

CHAPTER FIVE: CHARITABLE PURPOSE TRUSTS

a) Introduction206

b) The Legal Meaning of Charity: Charitable Purposes and Public Benefit

i) General208

ii) The Relief of Poverty

Introductory Note	212
Jones v. Executive Officers of the T. Eaton Co.	214
Notes	217

iii) The Advancement of Education

Introductory Note	218
Re Pinion; Westminster Bank Ltd. v. Pinion	221

iv) The Advancement of Religion

Introductory Note	224
Gilmour v. Coats	226
Notes	229

c) Other Purposes Beneficial to the Community

Introductory Note	231
Native Communications Society v. M.N.R.	235
Notes	238
Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.	240

d) The Legal Meaning of Charity: Associated Doctrines

i) Exclusivity

Introductory Note	251
Guaranty Trust Co. v. M.N.R.	252
Note	256

ii) Political Purposes

Introductory Note	257
Positive Action Against Pornography v. M.N.R.	259
Everywoman's Health Centre Society v. M.N.R.	265
Human Life International of Canada v. M.N.R.	271
Note	274

iii) Discriminatory Conditions

Re Canada Trust Co. and Ontario Human Rights Commission	275
--	-----

e) The Cy-pres Doctrine

<u>i) Introduction</u>	282
------------------------------	-----

ii) Impossibility and Impracticability

Introductory Note	282
Rector, Wardens and Vestry of the Parish of Christ Church v. Canada Permanent Trust Co.	284
Note	286

iii) Initial and Subsequent Failure and General Charitable Intent

Introductory Note	287
Royal Trust Corporation of Canada v. Hospital for Sick Children	288
Notes	289
Re Ramsden Estate	290
Notes	293

